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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/552,789

10/11/2005

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EXAMINER

VARNUM, RYAN A

ART UNIT

PAPER NUMBER

4118

MAIL DATE

DELIVERY MODE

02/17/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/552,789	<b>Applicant(s)</b> OWENS, RICHARD L.	
	<b>Examiner</b> RYAN VARNUM	<b>Art Unit</b> 4118	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7,20-24,26-31,34,35,38 and 43-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,20-24,26-31,34,35,38 and 43-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/11/2005</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This office action is responsive to the amendment filed on 10/11/2005. As directed by the amendment: claims 20, 26-27, 31, 34, 38, 43, 44, have been amended, claims 8-19, 25, 32-33, 36-37, 39-42 have been cancelled and claims 45-50 have been added. Thus, claims 1-7, 20-24, 26-31, 34-35, 38, and 43-50 are presently pending in this application.

### ***Claim Objections***

2. Claims 4 and 46 are objected to because of the following informalities:
3. Claim 4 states, in part, "...the second hole...". Claim 4 should be dependent on Claim 3 (instead of Claim 2) in order to provide proper antecedent basis for the claimed feature.
4. Claim 46 states, in part, "...a docking station remote from the enlarged end and shaped to simulate the dispenser opening and that is located remotely from the enlarged end and the opening,...". The underlined features of Claim 46 above are duplicative and provide no further limitation over one-another. Thus, in the proceeding examination of this application, examiner has interpreted the claim in light of the second, and more narrow, underlined section.
5. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 20, 26, 31, 45, 47 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Campbell (US Patent 4,648,506).

8. In re Claims 20 and 26, Campbell discloses, an article comprising: a spreader 10 (Fig. 1) including a preformed resilient sheet component 12 (Fig. 3) and a preformed deformable sheet component 16 (“planar membrane”; Fig. 3; Column 3, Line 15) bonded together (Column 3, Lines 41-42) and shaped to form a blister-shaped sealed container 22 (“blister”; Fig.’s 4-6; Column 2, Line 13) with a cavity 24 (“pocket”; Fig. 3; Column 3, Line 32) therebetween, the sealed container being airtight and water-tight (“sterile conditions” and “heat sealing”; Column 5, Lines 64-67) and adapted to contain spackling material (“caulking compound”; Column 3, Line 31); the resilient sheet component forming a blade 14 (Fig. 3) at one end suitable for spreading the spackling material (Column 3, Lines 17-19) and forming an opening 42 (Fig. 3) at the one end for dispensing the spackling material onto the blade (Column 4, Lines 6-13), the resilient sheet including at least two ribs (“parallel...ridges”) that extend toward the blade for stiffening the blade (Column 6, Lines 33-37); and a removable moisture-resistant

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adhesive seal (portion of 16 being removed from the opening 42, as seen in Fig. 3) sealingly covering the opening (Column 5, Lines 8-15); and the at least two ribs extend parallel each other ("parallel...ridges"; Column 6, Lines 33-37).

9. In re Claim 31, Campbell discloses, an article comprising: a first preformed component 12 (Fig. 3) made from a first sheet of resilient material ("relatively stiff"; Column 3, Lines 13-14) having a relatively constant wall thickness (Column 6, Lines 6-7) and a second preformed component 16 (Fig. 3) made from a deformable sheet of flexible material ("aluminum foil laminate"; Column 3, Lines 43-47) bonded together (Column 3, Lines 41-42) along a continuous bond line and shaped to form an airtight blister-shaped sealed container therebetween ("sterile conditions" and "heat sealing", Column 5, Lines 64-67; and "blister", Fig.'s 4-6; Column 2, Line 13), the second preformed component having a perimeter flange ("area which can be sealed"; Fig. 10; Column 6, Lines 47-54) bonded to the first preformed component and the first preformed component including first ribs 35 (Fig. 10; Column 6, Lines 47-54) extending along a portion of the perimeter flange to assist in locating the resilient and deformable sheets together during a bonding process (Fig. 10; Column 6, Lines 47-54); the first preformed component including an enlarged end forming a blade 14 (Fig. 3); and paste material sensitive to drying from exposure to atmosphere filling the container ("caulking compound"; Column 3, Line 31).

10. In re Claims 45, 47 and 49, Campbell further discloses, the resilient sheet 12 (Fig. 3) includes a dispenser opening 42 (Fig. 3) in the enlarged end for dispensing the paste material from the container onto the enlarged end (Column 4, Lines 6-13);

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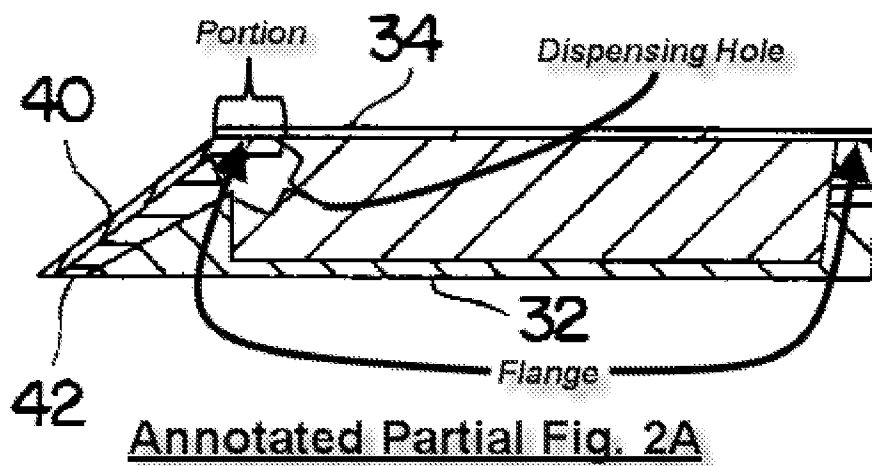
including an adhesive moisture-resistant removable seal (portion of 16 being removed from the opening 42, as seen in Fig. 3) covering the dispenser opening (Column 5, Lines 8-15); wherein the first preformed component 12 (Fig. 3) includes second ribs ("parallel...ridges") extending onto the enlarged end to stiffen the blade and to permit thinner material to be used for the first sheet (Column 6, Lines 33-37).

11. Claims 34 and 43-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Gusakov (US Patent 5,803,639).

12. In re Claims 34, Gusakov discloses the method comprising the steps of: forming a first sheet section 34 (Fig. 2A) of flexible material ("silicone rubber"; Column 8, Lines 60-62), including a perimeter flange ("flange", See Annotated Partial Fig. 2A below); forming a second sheet section 32 (Fig. 2A) of resilient material ("PVC"; Column 8, Lines 44-52), the second sheet section having a dispenser opening 38 ("aperture"; Fig. 2A; Column 4, Line 26) and an air bleed hole 42 ("dispenser"; Fig. 2A; column 4, Line 35) spaced from the dispenser opening (Fig. 2A); bonding the perimeter flange of the flexible material to the resilient material with a continuous bond ("ultrasonic welding"; Column 4, Lines 29-35) to form a blister package with a cavity 36 (Fig. 2A); filling the cavity with a paste 18 (Fig. 2A) through the dispenser opening (Column 4, Lines 25-27) while bleeding air through the air bleed hole; and sealing the dispenser opening ("plug 37"; Column 4, Lines 25-27) and the air bleed hole ("wick 44"; Column 4, Lines 54-56) to prevent the paste from drying.

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13. In re Claim 43, Gusakov discloses, an article comprising: a preformed first component 34 (Fig. 2A) made from a flexible thermoplastic polymer ("silicone rubber"; Column 8, Lines 60-62) and having a continuous perimeter flange ("flange", See Annotated Partial Fig. 2A below); a preformed second component 32 (Fig. 2A) made from a resilient thermoplastic polymer ("PVC"; Column 8, Lines 44-52) with a blade edge 40 ("sloping wall"; Fig. 2A; Column 4, Line 27) and a dispensing hole 42 (Fig. 2A) formed on one end and an air bleed hole 38 ("aperture"; Fig. 2A; Column 4, Line 26); and the perimeter flange being bonded to the second component (Column 4, Lines 29-35) to define a cavity 36 (Fig. 2A) and having a portion ("portion", See Annotated Partial Fig. 2A below) of the perimeter flange extending between the blade edge and the dispensing hole ("dispensing hole", See Annotated Partial Fig. 2A below); a paste material 18 (Fig. 2A) filling the cavity, the paste material being sensitive to drying out and clumping; and a seal 37 (Fig. 2A) covering at least the air bleed hole.



***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell. As applied to Claim 20 above, Campbell discloses all the claimed features, except the resilient sheet component being at least 0.030 inches thick and the deformable sheet component being between 0.010 and 0.030 inches thick. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the thickness of the resilient and deformable sheet components of the Campbell device, for the purpose of achieving the desirable resiliency and deformity, respectively, of the sheet components as would be necessitated by the nature of the specific substance to be stored within the spreader device ("butter... ketchup...or artists oil paint"; Column 3, Lines 29-32), since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

16. Claims 44 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gusakov.



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17. In re Claim 44, as applied to Claim 43 above, Gusakov further discloses the resilient thermoplastic polymer 32 (Fig. 2A) is a rigid PVC sheet material (Column 8, Lines 44-52). Gusakov does not disclose the flexible thermoplastic polymer is a flexible PVC sheet material. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute a flexible PVC material for the disclosed silicone rubber material (Column 8, Lines 60-62), for the purpose of providing a flexible material which will not be dissolved by the fluid within the cavity (Column 8, Lines 60-62), since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

18. In re Claim 50, as applied to Claim 34 above, Gusakov further discloses the resilient material 32 (Fig. 2A) being a PVC material (Column 8, Lines 44-52). Gusakov does not disclose the flexible material being a PVC material. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute a flexible PVC material for the disclosed silicone rubber material (Column 8, Lines 60-62), for the purpose of providing a flexible material which will not be dissolved by the fluid within the cavity (Column 8, Lines 60-62), since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

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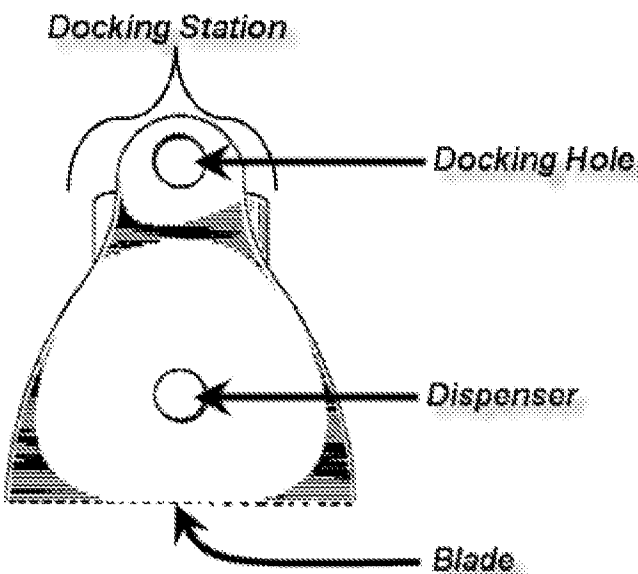
19. Claims 1-3, 5-7, and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gusakov in view of Owens (US Design Patent D449987).

20. In re Claim 1, Gusakov discloses, an article comprising: a spreader 30 (“scraper”; Fig. 2A; Column 4, Line 19) including a sealed container 30 (fig. 2A) forming a blade 40 (“sloping wall”; Fig. 2A; Column 4, Line 27) at one end and having a dispensing opening 42 (Fig. 2A) suitable for dispensing paste material from the container onto the blade, the sealed container 30 (Fig. 2A) being adapted to be filled with the paste material and for dispensing the paste material therefrom (Column 4, Lines 39-45).

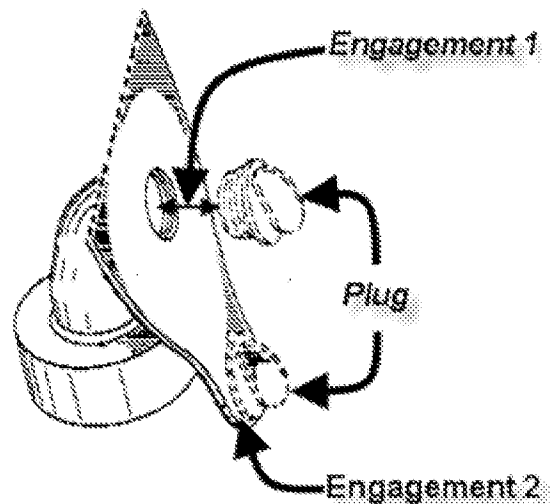
21. Gusakov does not disclose a docking structure remote from the blade; and a removable plug shaped to sealingly engage the dispensing opening to preserve the paste material for later use, and further shaped to engage the docking structure for storage while the article is being used to apply and spread the paste material with the blade. However, Owens teaches a dispenser/spreader comprising a docking structure (“docking station”, See Annotated Fig. 5 below) remote from the blade (“blade”, See Annotated Fig. 5 below); and a removable plug (“plug”, See Annotated Fig. 6 below) shaped to sealingly engage the dispensing opening (“dispenser”, See Annotated Fig. 5 below; and “engagement 1”, See Annotated Fig. 6 below) to preserve the paste material for later use, and further shaped to engage the docking structure (“engagement 2”, See Annotated Fig. 6 below) for storage while the article is being used to apply and spread the paste material with the blade; for the purpose of providing a resealable dispenser/spreader cap (Title).

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22. Therefore, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify the device of Gusakov, to include a docking structure remote from the blade; and a removable plug shaped to sealingly engage the dispensing opening to preserve the paste material for later use, and further shaped to engage the docking structure for storage while the article is being used to apply and spread the paste material with the blade, as taught by Owens, for the purpose of providing a resealable dispenser/spreader cap.



**Annotated Fig. 5**



**Annotated Fig. 6**

23. In re Claims 2 and 3, Owens further discloses the docking structure ("docking station", See Annotated Fig. 5 above) for the plug ("plug", See Annotated Fig. 5 above) is located at an end opposite the blade ("blade", See Annotated Fig.'s 5 and 6 above);

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and the docking structure includes a second hole ("docking hole", See Annotated Fig. 5 above).

The combination of Gusakov/Owens does not disclose the second hole being slightly larger than the dispensing opening. However, it would have been an obvious matter of design choice to make the second hole slightly larger than the dispensing opening, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

24. In re Claims 5-7, Gusakov further discloses, the spreader 30 (Fig. 2A) includes at least one side 34 (Fig. 2A) that is deformable and collapsible ("flexible", Column 4, Lines 24-25); forming a forming a blister-like ("membrane"), deformable side of the container (Column 4, Lines 24-25); and a relatively resilient sheet 32 ("rigid", Fig. 2A; Column 4, Lines 23-24) forming a second side of the container and also forming the blade ("sloping wall 40 of housing 32", Column 4, Lines 27-29).

25. In re Claim 27, Gusakov discloses an article comprising: a resilient sheet component 32 ("rigid", Fig. 2A; Column 4, Lines 23-24) and a deformable sheet component 34 ("flexible", Column 4, Lines 24-25) bonded together ("heat sealing", Column 4, Line 33) to form a blister-shaped container 30 (Fig.'s 2A and 3), the resilient sheet having an enlarged blade 40 (Fig. 2A) formed at a blade end and a dispenser hole 42 (Fig. 2A) also formed at the blade end for dispensing material from the container onto the blade (Column 4, Lines 39-45) and further having an air bleed hole 38 ("aperture"; Fig. 2A) remote from the dispenser hole (Fig. 2A) for facilitating filling of

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the container (Column 4, Lines 25-26); at least one sealing member 37 (Fig. 2A) sealingly covering the air bleed hole (Column 4, Lines 25-27) to maintain an airtight moisture-resistant seal of the container.

Gusakov does not disclose at least one removable sealing member sealingly covering the dispenser hole. However, Owens teaches a dispenser/spreader cap comprising a dispensing opening ("dispenser", See Annotated Fig. 5 above) comprising a removable sealing member ("plug", See Annotated Fig. 6 above) sealingly covering the dispenser hole ("engagement 1", See Annotated Fig. 6 above), for the purpose of providing a resealable dispenser/spreader cap (Title).

Therefore, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify the device of Gusakov, to include a removable sealing member sealingly covering the dispenser hole, as taught by Owens, for the purpose of providing a resealable dispenser/spreader cap.

26. In re Claims 28 and 30, Owens further discloses, an opposite end ("docking station", See Annotated Fig. 5 above) that is positioned opposite the blade end ("blade", See Annotated Fig. 5 above) and that includes a holder hole ("docking hole", See Annotated Fig. 5 above); and a plug ("plug", See Annotated Fig. 6 above) shaped to fit sealingly into the dispenser hole ("engagement 1", See Annotated Fig. 6 above) to maintain an airtight seal of the container, and shaped to fit into a holder hole ("docking hole", See Annotated Fig. 5 above; and "engagement 2", See Annotated Fig. 6 above) in the resilient sheet component ("blade", See Annotated Fig. 5 above) for secure storage while using the article to spread a substance dispensed from the container.

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27. In re Claim 29, Gusakov further discloses, the resilient sheet component 32 (Fig. 2A) is a rigid PVC material (Column 8, Lines 44-50) and the deformable sheet component bonded together ("ultrasonic welding", Column 4, Line 33) along a continuous uninterrupted bond line. Gusakov does not disclose the deformable sheet component being a flexible PVC material.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute a flexible PVC material for the disclosed silicone rubber material (Column 8, Lines 60-62), for the purpose of providing a flexible material which will not be dissolved by the fluid within the cavity (Column 8, Lines 60-62), since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

28. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gusakov in view of Owens, and further in view of Scammell (US Patent 4,470,521).

29. In re Claim 4, the combination of Gusakov and Owens discloses all the claimed features, except for the second hole including side notches to facilitate receipt of a "J" hook for merchandising displays. However, Scammell teaches a dispenser package having a second hole 50 (Fig. 1) including side notches (Fig. 1) facilitating receipt of a "J" hook for merchandising displays, for the purpose of providing a hanging slot (Column 5, Lines 49-50).

Therefore, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify the device of Gusakov/Owens, such that the second hole includes side notches to facilitate receipt of a "J" hook for merchandising displays, as taught by Scammell, for the purpose of providing a hanging slot.

30. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell as applied to Claim 20 above, and further in view of Owens.

31. In re Claim 21, Campbell discloses all the claimed features, except for the dispenser including a removable, resilient plug shaped to sealingly engage and close the opening. However, Owens teaches a dispenser/spreader comprising a removable, resilient plug ("plug", See Annotated Fig. 6 above) shaped to sealingly engage and close the opening ("dispenser", See Annotated Fig. 5 above; and "engagement 1", See Annotated Fig. 6 above), for the purpose of providing a resealable dispenser/spreader cap (Title).

Therefore, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify the device of Campbell, to include a removable, resilient plug shaped to sealingly engage and close the opening, as taught by Owens, for the purpose of providing a resealable dispenser/spreader cap.

32. In re Claims 22 and 23, Owens further discloses, a docking station ("docking station" and "docking hole", See Annotated Fig. 5 above) similarly shaped like the opening ("dispenser", See Annotated Fig. 5 above) that is located away from the blade

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("blade", See Annotated Fig. 5 above) and opening, so that the plug ("plug", See Annotated Fig. 6 above) can be held on the spreader without interfering with dispensing spackling material onto the blade and without interfering with using the article including the blade ("engagement 2", See Annotated Fig. 6 above); and wherein the docking station is located at an end opposite the blade and comprises a docking hole ("docking hole", See Annotated Fig. 5 above).

33. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gusakov in view of Altonen (US Patent 7,108,441).

34. In re Claim 35, Gusakov discloses all the claimed features, except for the step of bonding includes RF welding. However, Altonen teaches a dispensing package comprising two separate plastics which are bonded together, wherein the method of bonding the two plastics together is RF welding (Column 6, Line 66 to Column 7, Line 4), for the purpose of providing a dispensing package comprising two components which are integrally attached to one another (Column 6, Line 58 to Column 7, Line 4).

35. Therefore, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify the method of Gusakov, such that the step of bonding includes RF welding, as taught by Altonen, for the purpose of providing a dispensing package comprising two components which are integrally attached to one another.



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36. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gusakov as applied to Claim 34 above, and further in view of Campbell.

37. In re Claim 38, Gusakov discloses all the claimed features, except forming embossed ribs in the resilient material. However, Campbell teaches a spreader device comprising embossed ribs ("ridges"; Column 6, Lines 33-37) in the resilient material 12 (Fig. 3), for the purpose of providing a stiffer delivery blade 14 (Fig. 3; Column 6, Lines 33-37). Therefore, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify the method of Gusakov, to include the step of forming embossed ribs in the resilient material, as taught by Campbell, for the purpose of providing a stiffer blade.

38. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell as applied to Claim 45 above, and further in view of Owens.

39. In re Claim 46, Campbell discloses all the claimed features, except for the resilient sheet including a docking station remote from the enlarged end and shaped to simulate the dispenser opening and that is located remotely from the enlarged end and the opening, so that a plug for the opening can be held on the spreader without interfering with dispensing paste material onto the enlarged end and without interfering with using the enlarged end to spread the paste material.

However, Owens teaches a dispenser/spreader comprising a docking station ("docking station", See Annotated Fig. 5 above) shaped to simulate the dispenser opening ("dispenser" and "docking hole", See Annotated Fig. 5 above); and that is

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located remotely from the enlarged end ("blade", See Annotated Fig. 5 above) and the opening (See Annotated Fig. 5 above); so that a plug ("plug", See Annotated Fig. 6 above) for the opening can be held on the spreader without interfering with dispensing paste material onto the enlarged end and without interfering with using the enlarged end to spread the paste material ("engagement 2", See Annotated Fig. 6 above), for the purpose of providing a resealable dispenser/spreader cap (Title).

Therefore, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify the device of Campbell, such that the resilient sheet includes a docking station remote from the enlarged end and shaped to simulate the dispenser opening and that is located remotely from the enlarged end and the opening, so that a plug for the opening can be held on the spreader without interfering with dispensing paste material onto the enlarged end and without interfering with using the enlarged end to spread the paste material, as taught by Owens, for the purpose of providing a resealable dispenser/spreader cap.

40. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell as applied to Claim 45 above, and further in view of Gusakov.

In re Claim 48, Campbell discloses all the claimed features, except including an air bleed hole spaced from the dispenser opening, the air bleed hole being positioned to facilitate filling the container with material, and a seal sealingly closing the air bleed hole. However, Gusakov teaches a spreader including an air bleed hole 38 (Fig. 2A) spaced from the dispenser opening 42 (Fig. 2A), the air bleed hole being positioned to

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facilitate filling the container with material (Column 4, Lines 25-27), and a seal 37 (Fig. 2A) sealingly closing the air bleed hole (Column 4, Lines 26-27), for the purpose of providing a means for filling the spreader device with fluid (Column 4, Lines 25-27).

Therefore, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify the device of Campbell, to include an air bleed hole spaced from the dispenser opening, the air bleed hole being positioned to facilitate filling the container with material, and a seal sealingly closing the air bleed hole, as taught by Gusakov, for the purpose of providing a means for filling the spreader device with fluid.

### ***Double Patenting***

41. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

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1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

42. Claims 1-7, 20-24, 26, 31, 45-47, and 49 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7, 20-21, 23-24, and 26 of U.S. Patent No. 6,767,151 to Owens (Owens '151). Although the conflicting claims are not identical, they are not patentably distinct from each other.

43. In re Claims 1-2, see Claims 1-2 of Owens '151.

44. In re Claims 3-6, see Claims 3-6 of Owens '151.

45. In re Claim 7, see Claims 6-7 of Owens '151.

46. In re Claims 20-22, and 47, see Claims 20, 21, and 26 of Owens '151.

47. In re Claim 23, see Claims 20-21, 23, and 26 of Owens '151.

48. In re Claim 24 see Claims 20-21, 24, and 26 of Owens '151.

49. In re Claims 26-46, and 49, see Claims 20 and 26 of Owens '151.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN VARNUM whose telephone number is (571) 270-7853. The examiner can normally be reached on Monday - Friday, 9:00 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Quang Thanh can be reached on (571) 272-4982. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. V./  
Examiner, Art Unit 4118

/Quang D. Thanh/  
Supervisory Patent Examiner, Art  
Unit 4118